

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

TRINITY INDUSTRIES, INC.	:	
Borough of Greenville and Hempfield :		Hazardous Sites Cleanup Act
Township, Mercer County, PA :		Land Recycling Act

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 21ST day of December 2006, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Trinity Industries, Inc. ("Trinity").

FINDINGS

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, 35 P.S. §§6026.101-6026.908 ("Land Recycling Act"); and to administer and enforce the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§6020.101-6020.1305 ("HSCA"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §§510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").

B. Trinity is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2525 Stemmons Freeway, Dallas, Texas, 75207-2401.

The North Plant and The South Plant

C. This Consent Order and Agreement concerns two areas located in Mercer County, Pennsylvania. The first area contains one parcel of real property that covers approximately 34 acres located at 60 Union Street in the Borough of Greenville, Pennsylvania ("North Plant"). Trinity bought the North Plant in December 1986, and sold the North Plant in February 2004.

D. The second area contains three parcels of real property that covers approximately 52.63 acres located at 100 York Street in the Borough of Greenville and Hempfield Township, Pennsylvania ("South Plant"). Trinity bought the South Plant in 1989, and continues to own the South Plant as of the date of this Consent Order and Agreement.

E. Trinity manufactured railroad cars at the North Plant and South Plant until approximately 2000. The approximate surface boundaries of the North Plant and South Plant are shown on a map attached as Exhibit A, and incorporated herein.

F. The Department has obtained information that hazardous substances are located at the North Plant and South Plant and that a "release" and "threatened release" of "hazardous substances," within the meaning of those terms under Section 103 of HSCA, 35 P.S. §6020.103, occurred at the North Plant and South Plant. The hazardous substances include, without limitation, *inter alia*, xylenes, naphthalene, and 1,2,4-trimethylbenzene.

G. As areas where hazardous substances have been released and threaten to be released, the North Plant and the South Plant are each a "site" within the meaning of Section 103 of HSCA, 35 P.S. §6020.103.

H. Trinity is a "responsible person" for the release or threatened release of hazardous substances at the North Plant and South Plant under Section 701 of HSCA, 35 P.S. §6020.701.

I. Pursuant to its authority under HSCA, the Department has determined that further investigation is necessary to fully identify the nature and extent of the release of hazardous substances at and/or potentially migrating from the North Plant and South Plant, and to determine the Response Actions necessary to remediate the hazardous substances at and/or potentially migrating from each Plant.

J. On April 4, 2006, the Attorney General of Pennsylvania filed criminal charges against Trinity in the Mercer County Court of Common Pleas concerning the North Plant and South Plant.

K. As of the date of this Consent Order and Agreement, Trinity has resolved with the Pennsylvania Attorney General concerning the criminal charges brought against them. A copy of the criminal judgment is attached as Exhibit B, and incorporated herein.

L. As a condition of resolving the criminal charges and in settlement of the civil matters between Trinity and the Department, Trinity shall comply with the terms of this Consent Order and Agreement including, without limitation: propose for Department review and approval of the necessary plans and reports; investigate the North Plant and South Plant to fully identify the nature and extent of the release of hazardous substances at and/or potentially migrating from each Plant; and conduct the Department-approved Response Actions necessary to respond to the release of hazardous substances at and/or potentially migrating from each Plant to attain one or a combination of the Background, Statewide Health, and/or Site Specific cleanup standards under the Land Recycling Act.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and

AGREED to by Trinity as follows:

Authority

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 1102 of HSCA, 35 P.S. §6020.1102; Section 104(b) of the Land Recycling Act, 35 P.S. §6026.104(b); and Section 1917-A of the Administrative Code, 71 P.S. §§510-17.

Findings

2. Trinity agrees that the Findings in Paragraphs A through L, above, are true and correct and agrees that in any matter or proceeding between Trinity and the Department, Trinity shall not challenge the accuracy or validity of the Findings. Except for the Attorney General of Pennsylvania and the Department, the Parties do not authorize any other persons to use the Findings in any matter or proceeding or for any other purpose.

Definitions

3. Unless otherwise defined in this Consent Order and Agreement, the terms shall have the meaning assigned to them in HSCA. Whenever terms listed below are used in this Consent Order and Agreement, the following definitions shall apply:

a. "Commonwealth government" shall mean the government of the Commonwealth of Pennsylvania, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, the Attorney General, and the Departments, boards, commissions, authorities, and agencies of the Commonwealth of Pennsylvania and their officers and employees, but the term does not include any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision, municipal, or other local authority.

- b. "Consent Order and Agreement" shall mean this Consent Order and Agreement, including all Exhibits attached hereto.
- c. "Contamination" shall mean the presence of a "hazardous substance," as that term is defined in Section 103 of HSCA, 35 P.S. §6020.103, or a "regulated substance," as that term is defined in Section 103 of the Land Recycling Act, 35 P.S. 6026.103.
- d. "Natural Resource Damages" shall mean all of the damages, if any, assessed by the Department for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss resulting from the release and threatened release of hazardous substances at the North Plant and South Plant.
- e. "North Plant" shall mean the parcel of real property that covers approximately 34 acres located at 60 Union Street in the Borough of Greenville, Pennsylvania. The surface boundaries of the North Plant are more particularly described in Deed No. 2004-002330 in the Mercer County Recorder of Deeds. The term "North Plant" also includes groundwater under and migrating from this parcel, including groundwater (if any) that has migrated from the North Parcel and that has caused contamination of drinking water.
- f. "Parties" shall mean the Department and Trinity.
- g. "Response Actions" shall mean any and all of the actions taken or to be taken by the Department, Trinity, and/or any other responsible persons under the direction of the Department, relating to and addressing the release and threatened release of any hazardous substances at the North Plant and South Plant. Response Actions include, but are not limited to: investigations of responsible persons; investigations of environmental conditions at the North Plant and South Plant; investigations of contaminated groundwater, if any, at and potentially migrating from the Plants, including groundwater (if any) that has migrated and contaminated drinking water;

actions to respond to the release and threatened release of any hazardous substance at and/or potentially migrating from the North Plant and South Plant; and maintenance of those actions.

h. "Response Costs" shall mean all of the reasonable and necessary direct and indirect costs that the Department, Trinity, and/or any person acting on behalf of Trinity under the direction of the Department, have incurred and will incur relating to and addressing the Response Actions at the North Plant and South Plant. Response Costs include, but are not limited to: reasonable and necessary employee costs, attorneys' fees, contractor costs, sampling costs, costs of investigation, treatment, and/or replacement of contaminated drinking water, if any, laboratory costs, oversight costs, and accrued interest.

i. "South Plant" shall mean collectively the three parcels of real property that cover approximately 52.63 acres located at 100 York Street in the Borough of Greenville and Hempfield Township, Pennsylvania. The surface boundaries of the South Plant are more particularly described in 1989 Deed Record 00945 in the Mercer County Recorder of Deeds. The term "South Plant" also includes any groundwater at and potentially migrating from the South Plant, if any, including groundwater (if any) that has migrated from these parcels and that has caused contamination of drinking water.

Trinity's Supervising Contractor

4. Trinity's work at the North Plant and South Plant shall be performed, directed, and supervised by its Supervising Contractor, Joseph B. Gormley, Jr. of Golder Associates, Inc. who has been approved by the Department.

5. If Trinity proposes to change its Supervising Contractor, Trinity shall obtain written approval from the Department, which shall not be unreasonably denied, before a Supervising Contractor other than Joseph B. Gormley, Jr. of Golder Associates, Inc. performs, directs, or

supervises any of Trinity's work under this Consent Order and Agreement.

Trinity's Work

6. a. The North and South Plant. Trinity shall obtain prior approval from the Department and conduct the Response Actions in accordance with the Department-approved schedule to fully investigate and respond to the release of hazardous substances at the North Plant and South Plant to attain one or a combination of the Background, Statewide Health, or Site Specific cleanup standards selected by Trinity and approved by the Department pursuant to Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, for non-residential use.

b. Contamination migrating from the North Plant or South Plant. For any release of hazardous substances in groundwater or soil that is migrating from the North Plant and/or South Plant, Trinity shall attain one or a combination of the Background or Statewide Health cleanup standards selected by Trinity, and approved by the Department pursuant to Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, for residential use.

c. The Response Actions required by Paragraphs 6.a. and 6.b., above, shall include, without limitation: paying all fees required under the Land Recycling Act; publishing notices; submitting, revising, and finalizing all required documents for the Department's approval; and completing and maintaining the Response Actions, including the investigation, remediation, and post-remediation care activities at each Plant, if necessary, in accordance with the Land Recycling Act, any other applicable environmental laws and Regulations, and the requirements of this Consent Order and Agreement.

7. Trinity shall comply with Paragraph 6, above, as follows:

a. Within 60 days of the date of this Consent Order and Agreement, Trinity shall submit to the Department a proposed Investigation Work Plan, including a proposed schedule, for

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the investigation of hazardous substances, soils, surface water, and groundwater at and/or potentially migrating from the North Plant and South Plant. The proposed schedule shall include, at a minimum, a date for completion of the investigation, submission of a Notice of Intent to Remediate, and a Remedial Investigation Report. Upon approval by the Department, Trinity shall implement the Investigation Work Plan at each Plant in accordance with the approved schedule for each Plant.

b. If, after Trinity begins to implement the approved Investigation Work Plan, the Department determines, or Trinity proposes, that supplemental tasks are necessary to fully investigate the hazardous substances, soils, surface water, and/or groundwater at and/or potentially migrating from both or either Plants, the Department or Trinity shall notify the other Party in writing of such proposed supplemental tasks.

c. Within 60 days after notice from the Department or Trinity under the preceding Paragraph, Trinity shall submit to the Department, for review and approval, a plan for the proposed supplemental tasks ("Supplemental Investigation Work Plan"). The Supplemental Investigation Work Plan shall contain a schedule for implementing the supplemental tasks and, if appropriate, revised dates for completion of the investigation and submission of a Remedial Investigation Report.

d. Until a Supplemental Investigation Work Plan is approved by the Department, Trinity shall continue its work at each Plant in accordance with the approved Investigation Work Plan. Upon approval by the Department of the Supplemental Investigation Work Plan, Trinity shall complete the investigation at each Plant in accordance with the approved schedule in the Investigation Work Plan, as modified by the Supplemental Investigation Work Plan. Any further revisions to the Investigation Work Plan or the Supplemental Investigation Work Plan shall be subject to the Department's prior review and approval, which will not be unreasonably withheld.

e. In accordance with the approved schedule in the Department-approved Investigation Work Plan, as revised by the Department-approved schedule in a Supplemental Investigation Work Plan, as applicable, Trinity shall submit to the Department a Notice of Intent to Remediate for the North Plant and South Plant, to attain one or a combination of the Background, Statewide Health, or Site Specific cleanup standards under Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, in accordance with the limitations of this Paragraph 6. Trinity shall also comply with all other procedural and substantive requirements of the Land Recycling Act relating to such Notice of Intent to Remediate. In accordance with the approved schedule in the Department-approved Investigation Work Plan, as revised by the Department-approved schedule in a Supplemental Investigation Work Plan, if applicable, Trinity shall submit to the Department a Remedial Investigation Report that identifies, in detail, the nature and extent of the contamination at the North Plant and South Plant and the nature and extent of contamination of the soils (including any hazardous substance vapors that are causing or could cause indoor air problems in any present or future buildings at each Plant), groundwater, and surface water, if any, at and/or potentially migrating from each Plant.

f. If the Remedial Investigation Report documents that any contamination at the North Plant or South Plant and any contamination of the soils (including, but not limited to, any hazardous substance vapors that are causing or could cause indoor air problems in any present or future buildings at each Plant), groundwater, and surface water, if any, at and/or potentially migrating from either or both Plants do not exceed the Used-Aquifer Non-Residential Statewide Health cleanup standard under Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, then within 120 days of the Department's approval of the Remedial investigation Report, Trinity shall submit a Final Report for the Plant or Plants for which no cleanup is required. The Final

Report shall comply with the applicable requirements of the Land Recycling Act and the Regulations.

g. If the Remedial Investigation Report documents the presence of contamination that exceeds used aquifer non-residential Statewide Health cleanup standards under Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, then within 60 days after the Department approves the Remedial Investigation Report, Trinity shall submit a proposed Cleanup Work Plan, including a proposed schedule and a proposed Health and Safety Plan that complies with the applicable requirements of 29 C.F.R. §1910.120, for the Response Actions necessary to clean up any contamination in soils (including, but not limited to, any remediation necessary to prevent hazardous substance vapors from causing indoor air problems in any present or future buildings at each Plant), surface water, and groundwater at and/or migrating from the North Plant and South Plant to one or a combination of the Background, Statewide Health, and/or Site Specific cleanup standards under Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, in accordance with Paragraph 6, above. The terms of the Cleanup Work Plan shall be selected by Trinity and subject to approval by the Department. Upon approval by the Department of the Cleanup Work Plan, Trinity shall begin and complete the approved Response Actions at each Plant in accordance with the approved schedule.

h. If, after Trinity begins to implement the approved Cleanup Work Plan, the Department determines, or Trinity proposes, that supplemental tasks are necessary to clean up any contamination in, soils, surface water, and/or groundwater at and/or potentially migrating from the North Plant and South Plant to one or a combination of the Background, Statewide Health, and/or Site Specific cleanup standards under Chapter 3 of the Land Recycling Act, 35 P.S. §§6026.302-6026.303, in accordance with Paragraph 6, above, the Department or Trinity shall notify the other

Party in writing of such proposed supplemental tasks.

i. Within 60 days after notice from the Department or Trinity under the preceding Paragraph, Trinity shall submit to the Department, for review and approval, a plan for the proposed supplemental tasks ("Supplemental Cleanup Work Plan"). The Supplemental Cleanup Work Plan shall contain a schedule for implementing the supplemental tasks.

j. Until a Supplemental Cleanup Work Plan is approved by the Department, Trinity shall continue its work at each Plant in accordance with the approved Cleanup Work Plan. Upon approval by the Department of the Supplemental Cleanup Work Plan, Trinity shall complete the approved Response Actions at each Plant in accordance with the approved schedule in the Cleanup Work Plan as modified by the Supplemental Cleanup Work Plan. Any further revisions to the Cleanup Work Plan or the Supplemental Cleanup Work Plan shall be subject to the Department's prior review and approval.

k. Trinity shall implement the Department-approved Response Actions at each Plant in accordance with the Department-approved Health and Safety Plan that complies with the applicable requirements of 29 C.F.R. §1910.120.

l. Within 90 days of completing all of the Response Actions at each respective Plant under the Department-approved Cleanup Work Plan or Supplemental Cleanup Work Plan, as applicable, Trinity shall submit to the Department a "Final Report" for the Plant at issue, or for both the North Plant and South Plant if the Response Actions are completed at the same time. The Final Report shall be signed by Trinity's Project Coordinator, and Trinity shall certify that its work has been completed in compliance with this Consent Order and Agreement;

m. Before submission of the Final Report, Trinity shall schedule a pre-certification inspection with the Department at each Plant at which work has been completed;

n. If after review of the Final Report, the pre-certification inspection, and other available information, the Department determines that Trinity has not completed its work in compliance with this Consent Order and Agreement, the Department shall notify Trinity, in writing, of the tasks necessary to complete Trinity's work. Trinity shall submit to the Department, for review and approval, a schedule for completing those tasks, Trinity shall perform all of the tasks necessary to complete its work in accordance with the approved schedule, and Trinity shall submit to the Department a Revised Final Report and shall schedule a pre-certification inspection with the Department at the applicable Plants;

o. If after review of the Revised Final Report, the pre-certification inspection, and other available information, the Department determines that Trinity has not completed its work in compliance with this Consent Order and Agreement, Trinity shall be in breach of this Consent Order and Agreement and shall be subject to stipulated penalties pursuant to Paragraph 24, below, until Trinity completes its work under Paragraphs 7.a. through 7.m., above, and submits a Revised Final Report that is approved, in full, by the Department; and

p. If after review of the Final Report or Revised Final Report, as applicable, the pre-certification inspection, and other available information, the Department determines that Trinity has completed its work in compliance with this Consent Order and Agreement, the Department shall certify that Trinity's Work under this Consent Order and Agreement is completed.

q. Upon approval by the Department of the Final Report or Revised Final Report, as applicable, Trinity shall take whatever actions are necessary to maintain the Response Actions, including the post-remediation care activities, at the North Plant and South Plant in accordance with the Department approved Final Report.

r. Trinity shall pay to the Department any fees relating to the submission of any plans, reports, as required under the Background, Statewide Health, and/or Site Specific cleanup standards under the Land Recycling Act, as applicable.

Access

8. Trinity shall use reasonable efforts to promptly obtain and maintain access for itself and for the Department and the Department's representatives to the North Plant and to any properties near the North Plant and/or to the South Plant as necessary to meet Trinity's obligations under this Consent Order and Agreement. Nothing in this Consent Order and Agreement shall limit the rights of access or entry that the Department may otherwise have by law.

No Public Funding For Trinity's Obligations Under This Consent Order And Agreement

9. Neither Trinity, nor its directors, officers, employees, contractors, agents, representatives, successors, assigns, or any other persons acting under or for Trinity (including economic development agencies acting on behalf of Trinity or for Trinity's benefit in any way) shall apply for, obtain, or use public funds, and/or assert any claims for reimbursement from the Commonwealth or any federal agency to pay for Trinity's obligations under this Consent Order and Agreement. Nothing herein shall prevent Trinity from using its own corporate funds to complete its obligations under this Consent Order and Agreement.

Non-Interference, Non-Exacerbation, and Liability

10. Neither Trinity, nor its directors, officers, employees, contractors, agents, representatives, successors, assigns, or any other persons acting under or for Trinity shall, by act or omission, exacerbate the release and threatened release of hazardous substances at the North Plant and/or South Plant.

11. Trinity shall be liable for any violation of this Consent Order and Agreement, including those caused by, contributed to, or allowed by Trinity's directors, officers, employees, contractors, agents, representatives, successors, assigns, or any other persons acting under or for Trinity.

Project Coordinators and Service of Legal Process

12. Trinity's Project Coordinator is:

Joseph B. Gormley, Jr., P.E., Senior Consultant
Golder Associates, Inc.
200 Century Parkway, Suite C
Mt. Laurel, NJ 08054
Phone: 856-793-2005
Fax: 856-793-2006
jgormley@golder.com

13. The Department's Project Coordinator is:

Mark Ansell, Licensed Professional Geologist
Environmental Cleanup
Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335-3481
Phone: 814-332-6648
Fax: 814-332-6121
mansell@state.pa.us

14. Trinity shall notify the Department's Project Coordinator by telephone, e-mail, or in writing at least five business days before starting any Response Action at each Plant.

15. If the Project Coordinator is changed, then the identity of the successor shall be given to the other party, in writing, at least five business days before the change is made, unless impracticable, in which case notice shall be given no later than the actual day the change is made.

16. Service by the Department or Trinity of any legal process or notice for any purpose under this Consent Order and Agreement, including its enforcement, may be made by hand or courier delivery with written receipt or first-class mail to the Department's or Trinity's Project Coordinator.

Submission, Review, Approval, and Disapproval of Documents

17. For any documents required under this Consent Order and Agreement, Trinity may submit a document that covers both the North and South Plants or may submit separate documents for each Plant. In all cases, Trinity shall submit to the Department's Project Coordinator two copies of all documents required under this Consent Order and Agreement. The Department will review any document submitted by Trinity and will approve, approve with modifications, or disapprove the document, or portion thereof, in writing, within the time periods provided under the Land Recycling Act. Department approval will not be unreasonably withheld.

18. If a document, or any portion of a document, is disapproved by the Department, Trinity shall submit a revised document to the Department that addresses the Department's concerns within a reasonable time, as specified by the Department.

19. If Trinity is required to submit a revised document under Paragraph 18, above, and the revised document submitted pursuant to Paragraph 18, above, is disapproved by the Department because it does not address the Department's concerns stated in its prior written disapproval, Trinity shall be in breach of this Consent Order and Agreement and shall be subject to stipulated penalties pursuant to Paragraph 23, below, until it submits a revised document to the Department that

addresses the Department's concerns and the revised document is approved, in full, by the Department.

20. Upon approval by the Department, any document or revised document, including any schedules therein, shall become a part of this Consent Order and Agreement for all purposes and shall be enforceable as such.

Force Majeure

21. a. If Trinity is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances entirely beyond Trinity's control, and which Trinity, by the exercise of all reasonable diligence, is unable to prevent, then Trinity may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Trinity's control. Trinity's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Trinity shall only be entitled to the benefits of this Paragraph, if it notifies the Department within five working days by telephone, and within 10 working days in writing, of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written notice shall include all necessary documentation, as well as a notarized affidavit from an authorized individual, specifying the reasons for the delay, and the efforts which have been made and are being made by Trinity to mitigate the effects of the event and to minimize the length of the delay. The initial written notice may be supplemented within 10 working days after its submission to the Department. Trinity's failure to comply with the requirements of this Paragraph specifically

and in a timely fashion shall render this Paragraph null and of no effect as to the particular event involved.

c. The Department shall decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Trinity and other information available to the Department. In any subsequent litigation, Trinity shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to the Department.

Civil Penalty

22. Upon signing this Consent Order and Agreement, Trinity shall pay a civil penalty of \$50,000. This payment shall be in full resolution of the claims and Findings made herein by the Department. The payment shall be made by corporate check or the like made payable to the Hazardous Sites Cleanup Fund, and shall reference the North Plant and South Plant.

Stipulated Civil Penalties

23. a. If Trinity fails to comply in a timely manner with the requirements of Paragraphs 6 or 19 of this Consent Order and Agreement, including failing to comply with a schedule in a document approved by the Department under this Consent Order and Agreement, Trinity shall be in violation of this Consent Order and Agreement and, in addition to any other applicable remedies, shall pay a civil penalty in the amount of \$100 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the 15th day of each succeeding month, and shall be forwarded to the Department's Project Coordinator.

c. Any payment under Paragraph 21 shall neither waive Trinity's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Trinity's compliance with the terms and conditions of this Consent Order and

Agreement. The payment resolves only Trinity's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

Decisions Under This Consent Order And Agreement And Criminal Settlement

24. Any decision that the Department makes or notice that the Department provides under this Consent Order and Agreement is not intended to be either a final action under 25 Pa. Code §1021.2, or an adjudication under 2 Pa.C.S. §101. Any objection to a decision or notice of the Department that Trinity makes under this Consent Order and Agreement including, without limitation, any Department decisions regarding stipulated penalties under Paragraph 23, above, shall be preserved until the Department enforces this Consent Order and Agreement.

25. If the Department prevails in an action to enforce this Consent Order and Agreement at the Mercer County Court of Common Pleas, Trinity shall reimburse the Department for all costs and expenses of such enforcement action including, but not limited to, the Department's reasonable personnel costs and attorneys' fees, and Trinity shall pay all stipulated penalties owed for the breach of this Consent Order and Agreement pursuant to Paragraph 23, above.

Permits

26. Pursuant to Section 504(g) of HSCA, 35 P.S. §6020.504(g), Trinity shall obtain any and all permits, or written approvals from the Department in lieu of permits, that are necessary to comply with this Consent Order and Agreement. This Consent Order and Agreement is not a permit and shall not be construed to stand in lieu of a permit.

Indemnification

27. Trinity shall indemnify and defend the Department and hold the Department harmless from any claims arising from any injuries or damages to persons or property resulting from any acts

or omissions of Trinity, or its directors, officers, employees, contractors, agents, representatives, successors, assigns, or any other persons acting under or for Trinity under this Consent Order and Agreement. Trinity shall select counsel in any action brought against Trinity and/or the Department, under this indemnity.

Trinity's Covenants Not to Sue

28. Trinity covenants not to sue and shall not assert any claims, demands, appeals, or causes of action, in law or in equity, against the Commonwealth government arising from the release and threatened release of hazardous substances at and/or potentially migrating from the North Plant and/or South Plant, arising out of Trinity's work at the North Plant and/or South Plant, or arising out of this Consent Order and Agreement. This covenant not to sue extends only to the Commonwealth government and does not extend to any other person.

Waiver of Other Claims by Trinity

29. Trinity shall not assert any claims for reimbursement and/or indemnity from the Hazardous Sites Cleanup Fund or the Commonwealth government for matters arising from the release and threatened release of hazardous substances at and/or migrating from the North Plant and/or South Plant, arising out of Trinity's work at the North Plant and/or South Plant, or arising out of this Consent Order and Agreement.

30. Trinity waives any claims or defenses that it may have regarding the application of Sections 708, 709, and 1301 of HSCA, 35 P.S. §§6020.708, 6020.709, and 6020.1301, for matters arising from the release and threatened release of hazardous substances at and/or migrating from the North Plant and/or South Plant, arising out of Trinity's Work at the North Plant and/or South Plant Site, or arising out of this Consent Order and Agreement.

Department's Covenants Not to Sue

31. Subject to the reservation of rights and additional remedies provided in Paragraphs 32 through 38, below, the Department's covenants not to sue or to take administrative action against Trinity for Response Costs, Response Actions, and injunctive relief arising from the release or threatened release of hazardous substances at and/or potentially migrating from the North Plant and/or South Plant. These covenants not to sue shall take effect upon execution of this Consent Order and Agreement by the Parties, extend only to Trinity, its parent, subsidiaries, and successors, and shall terminate upon Trinity's failure to meet the requirements of this Consent Order and Agreement.

Department's Reservation of Rights

32. The information received by and presently known to the Department includes only that information set forth in this Consent Order and Agreement and all information obtained by the Department and/or the Attorney General of Pennsylvania prior to the Effective Date of this Consent Order and Agreement, including all reports, investigations, writings, lab and monitoring results, data, or other documents that have been provided to or are in the possession of the Department or the Attorney General of Pennsylvania relating to the North Plant and the South Plant.

33. The Department's covenants not to sue shall also not apply to the following claims by the Department against Trinity for:

- a. Failure to comply with this Consent Order and Agreement;
- b. Past, present, or future releases or threatened releases of hazardous substances not identified in the following documents: (1) the Remedial Investigation Report submitted pursuant to Paragraph 7.e., above, and approved by the Department; (2) the Cleanup Work Plan submitted pursuant to Paragraph 7.g., above, and approved by the Department; or, (3) any Supplemental Cleanup Work Plan submitted pursuant to Paragraph 7.i., above, and approved by the Department;

- c. Past, present, or future violations of State or federal criminal law other than the criminal violations specifically identified in the charges filed by the Pennsylvania Attorney General against Trinity on April 4, 2006; and
- d. Natural resource damages.

34. With regard to all matters not expressly addressed in this Consent Order and Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil, or criminal actions against Trinity for any past, present, or future violation of any statute, Regulation, permit, or order, or any pollution or potential pollution to the air, land, or waters of the Commonwealth of Pennsylvania.

Additional Remedies

35. If Trinity fails to comply with this Consent Order and Agreement, the Department may, in addition to any remedies prescribed herein, pursue any remedy available for a violation of an Order of the Department, including an action to enforce this Consent Order and Agreement.

36. The remedies provided by the preceding Paragraph are cumulative and the exercise of one does not preclude the exercise of another. The Department's failure to pursue any remedy shall not be deemed to be a waiver of that remedy.

37. The Department also may order Trinity to halt its work under this Consent Order and Agreement, and/or the Department may do Trinity's work, or a portion of that work, at any time that the Department determines that: a) Trinity is not complying with this Consent Order and Agreement; and, b) such action is necessary to protect the public health, safety, and welfare, and/or the environment.

38. a. If the Department does work because of Trinity's failure to comply with this Consent Order and Agreement, Trinity shall reimburse the Department's reasonable and necessary Response Costs within 60 days after receipt of an itemized written demand for such Costs.

b. If the Department prevails in an action against Trinity to collect the Response Costs for doing Trinity's work because of Trinity's failure to comply with this Consent Order and Agreement, Trinity shall pay: the Department's Response Costs plus 4% interest from the date of the receipt of the demand letter sent pursuant to Paragraph 39.a., above; all of the reasonable and necessary costs and expenses incurred by the Department to bring the action including, but not limited to, the Department's reasonable and necessary personnel costs and attorneys' fees; and any stipulated penalties owed for the breach of this Consent Order and Agreement pursuant to Paragraph 23, above.

Contribution

39. Subject to the reservation of rights and additional remedies provided in Paragraphs 32 through 38, above, Trinity is a person that has resolved its liability to the Department for the North Plant and South Plant, and it is eligible for protection from claims for contribution regarding the matters addressed in this settlement, as provided by Section 705(c)(2) of HSCA, 35 P.S.

§6020.705(c)(2). This contribution protection is intended to be as broad as permissible under Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2), and the "matters addressed" in this settlement encompass all of the Response Actions and Response Costs at the North Plant and South Plant. This contribution protection shall take effect upon execution of this Consent Order and Agreement by the Parties, and extends only to Trinity, its officers, directors, employees, parent, subsidiaries, and successors, and shall terminate upon Trinity's failure to meet the requirements of Paragraphs 6, 9, 10, or 23, above, of this Consent Order and Agreement.

Acknowledgment of No Obligation

40. Trinity acknowledges that the Department has no obligation to defend it in any suit, demand, or claim for contribution for any matters arising from the release and threatened release of

any hazardous substances at and/or potentially migrating from the North Plant and/or South Plant, arising out of Trinity's work at the North Plant and/or South Plant, or arising out of this Consent Order and Agreement.

Transferability

41. a. Trinity's duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the North Plant or South Plant or any parts thereof.

b. If Trinity intends to transfer any legal or equitable interest in the South Plant, or any part thereof, or Trinity learns of any proposed transfer of any legal or equitable interest in the North Plant, or any part thereof, Trinity shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least 15 days prior to the contemplated transfer, and shall simultaneously inform the Department's Project Coordinator in writing of the proposed transfer.

Exhibits

42. Exhibit A – is a map of the approximate surface boundaries of the North Plant and the South Plant.

Exhibit B – is a copy of the judgment between the Pennsylvania Attorney General and Trinity concerning the criminal charges brought against Trinity in relation to the North Plant and South Plant.

Severability

43. The Paragraphs of this Consent Order and Agreement shall be severable and should any part be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

Entire Agreement

44. This Consent Order and Agreement as well as all Exhibits hereto shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

Attorneys' Fees

45. The Parties shall bear their respective attorneys' fees, expenses, and other costs in the prosecution or defense of this matter, or any related matters, arising prior to execution of this Consent Order and Agreement.

Modifications

46. a. No changes, additions, modifications, or amendments to this Consent Order and Agreement shall be effective unless they are set out in writing, signed by both Parties.

b. If there is a material increase in the cost of performing Trinity's obligations herein, Trinity may petition the Department to modify this Consent Order and Agreement to allow additional time to arrange appropriate funding.

c. If Trinity is denied access to the North Plant after taking all reasonable means to gain such access, including availing itself of court if a court-ordered remedy is available and other reasonable means necessary to obtain access, then Trinity may petition the Department to modify this Consent Order and Agreement.

Titles

47. A title used at the beginning of any Section of this Consent Order and Agreement may be used to aid in the construction of that Section, but shall not be treated as controlling.

Notification To The Office of The Attorney General

48. The Department will notify the Pennsylvania Attorney General, in writing, upon Trinity's compliance with all of the requirements of this Consent Order and Agreement.

No Effect On Third Parties

49. Nothing in this Consent Order and Agreement shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department or Trinity have against any person that is not named in this Consent Order and Agreement. The Department and Trinity expressly reserve the right to sue or continue to sue, or seek any other appropriate relief from, any person that is not named in this Consent Order and Agreement.

Opportunity for Public Comment

50. Pursuant to Section 1113 of HSCA, 35 P.S. §6020.1113, the Department will publish a notice in the *Pennsylvania Bulletin* and the *Greenville Record-Argus* containing a summary of the terms of this Consent Order and Agreement. The Department will receive and consider comments relating to this Consent Order and Agreement for 60 days from publication of this notice. The Department reserves the right to withdraw its consent to this Consent Order and Agreement if the comments disclose facts or considerations which indicate that this Consent Order and Agreement is inappropriate, improper, or not in the public interest.

Effective Date

51. This Consent Order and Agreement shall be effective upon the date that the Department notifies Trinity, in writing, that this Consent Order and Agreement is final and effective in its present form and that the Department has filed a response to any significant written comments received pursuant to Paragraph 50, or that no such comments were received. However, if the

Department notifies Trinity that it is withdrawing its consent to this Consent Order and Agreement in response to the public comments received pursuant to Paragraph 50, above, the terms of this Consent Order and Agreement shall be void, shall have no force or effect, and shall not be used as evidence in any litigation or any other proceeding.

IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. Trinity consents to the entry of this Consent Order and Agreement and the foregoing Findings as an ORDER of the Department and as a condition of Trinity's criminal settlement with the Pennsylvania Attorney General; and Trinity hereby knowingly waives its rights to appeal this Consent Order and Agreement and the foregoing Findings, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa.C.S. §103(a), and Chapters 5A and 7A; Sections 508 and 1102 of HSCA, 35 P.S. §§6020.508 and 6020.1102, or any other provision of law. The signature by Trinity's attorney approves this Consent Order and Agreement as to form and content, and certifies only that the Consent Order and Agreement has been signed by Trinity after consulting with counsel.

[signature page follows]

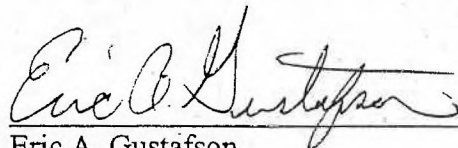
Order and Agreement and the foregoing Findings as an ORDER of the Department and as a condition of Trinity's criminal settlement with the Pennsylvania Attorney General; and Trinity hereby knowingly waives its rights to appeal this Consent Order and Agreement and the foregoing Findings, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa.C.S. §103(a), and Chapters 5A and 7A; Sections 508 and 1102 of HSCA, 35 P.S. §§6020.508 and 6020.1102, or any other provision of law. The signature by Trinity's attorney approves this Consent Order and Agreement as to form and content, and certifies only that the Consent Order and Agreement has been signed by Trinity after consulting with counsel.

FOR TRINITY INDUSTRIES, INC.;



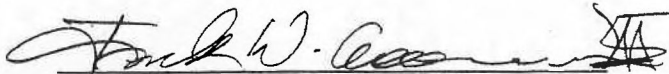
Name
Title

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION:**



Eric A. Gustafson
Regional Manager
Environmental Cleanup
Northwest Region

Approved as to form and content



Frederick W. Addison, III, Esquire
Locke Liddell & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-6776



Douglas G. Moorhead
Assistant Counsel

Exhibit A

Order and Agreement and the form and content, and certified only that the Order and Agreement has been signed by Trinity after consulting with counsel.


Provision 1122 as any other provision of law. The signature of Trinity's attorney approves this Consent Order and Agreement as to form and content, and certified only that the Consent Order and Agreement has been signed by Trinity after consulting with counsel.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION


Eric A. Gonsky
Regional Manager
Environmental Planning
Northwest Region


Douglas W. Adams
Assistant Counsel

FOR TRINITY INDUSTRIES, INC.


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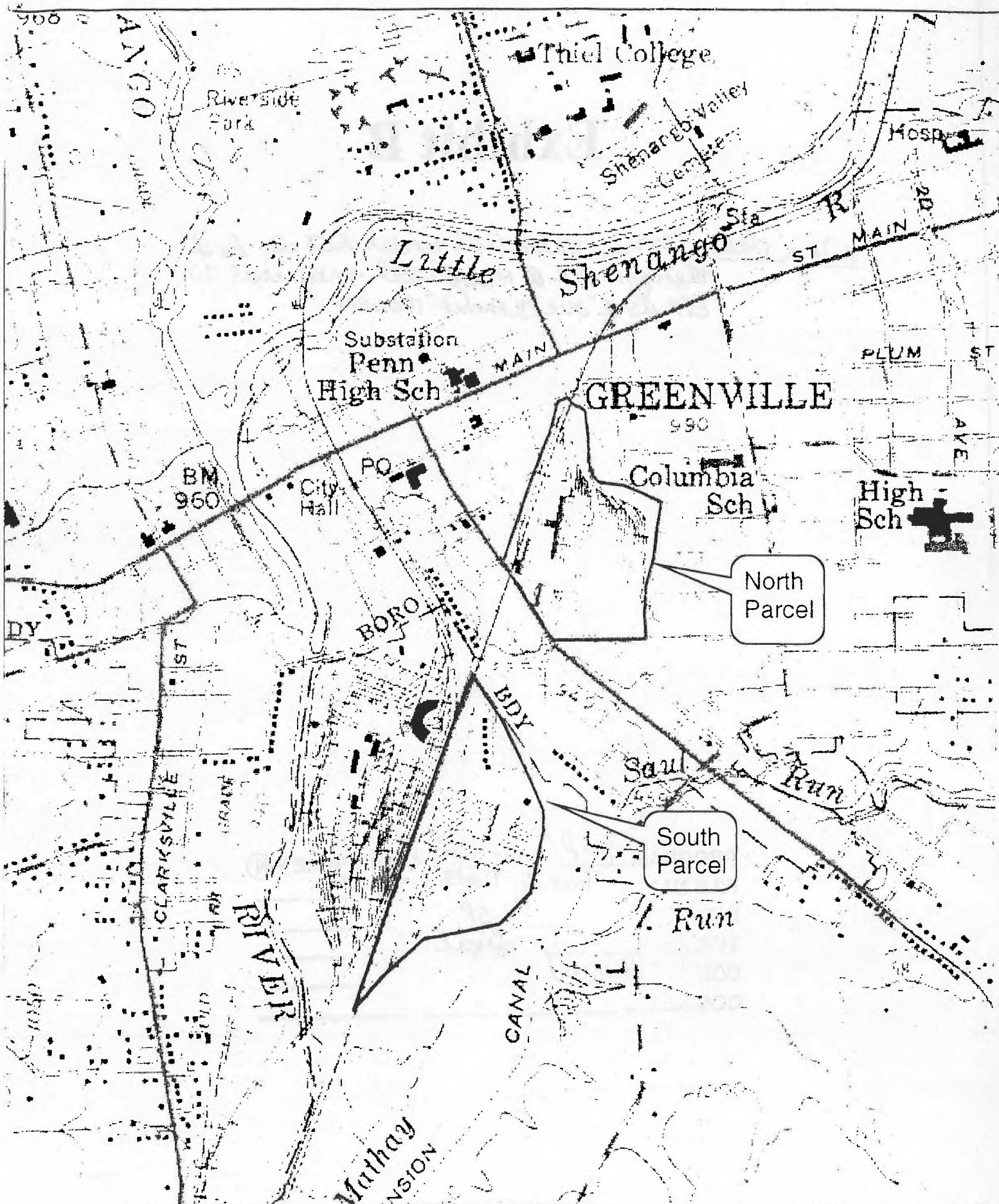


Exhibit B

Work Plan - Not a submittal under Act 2, And
therefore not a recognized submittal to
EPA as a "one CLEANUP PROGRAM".

PROGRAM ECP CONF YIN MICROFICHE YIN
FILE NAME Trinity North & South
BREAK SP
TYPE Legal
COUNT Mercur
COMMENTS _____